

87-1624

Supreme Court, U.S.

FILED

APR 12 1988

JOSEPH F. SPANIOLO, JR.  
CLERK

NO. \_\_\_\_\_

IN THE SUPREME COURT  
OF THE UNITED STATES

\_\_\_\_\_  
THOMAS W. JONES,  
Petitioner

v.

LAWRENCE N. VERBIEST,  
Wayne County Director of  
Elections,  
Respondent

\_\_\_\_\_  
BRIEF IN OPPOSITION  
TO PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEAL  
FOR THE SIXTH CIRCUIT  
\_\_\_\_\_

SAMUEL A. TURNER

Wayne County Corporation Counsel

JOHN J. McCANN

Assistant Corporation Counsel

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Assistant Corporation Counsel

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Attorneys for Respondent

6 pph

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COUNTER STATEMENT OF  
QUESTIONS PRESENTED

I

Ought the Court entertain a petition for Certiorari where the plaintiff seeks equitable relief and the defendant is no longer capable of granting same and no substitution of parties has been ordered in the lower courts?

II

Is there such substantial error in the lower court's rulings that would justify the grant of Certiorari?

III

May a plaintiff introduce a new issue on application for certiorari?



## COUNTER-STATEMENT OF THE CASE

Plaintiff sued Defendant as Director of Elections of Wayne County, a county civil service position that executes the ministerial functions of the Wayne County Clerk of the Wayne County Election Commission or the Wayne County Board of Canvassers depending on the function.

Plaintiff requested placement on the November 1986 Ballot as a candidate for State Senate for the Libertarian Party.

The Libertarian Party did not qualify with the Michigan Secretary of State for placement on the November 1986 ballot.

On December 31, 1986 Defendant Verbiest retired from the Civil Service position of Wayne County Director of Elections and no substitution was ordered.

Defendant answered the complaint and raised questions of capacity. The trial court dismissed citing abstention. The Court of Appeals upheld the trial court on grounds of abstention.



## BRIEF

Defendant being retired from his position is no longer capable of placing anyone on a ballot. Plaintiff has failed to make a Motion substituting the proper party in this action and no court has ordered substitution.

As to abstention, the Lower courts correctly applied the law as generally recognized. Detailed argument on the justification of abstention is properly reserved for argument should the court grant the writ. However as Plaintiff points out it is the existence of abstention with which he takes issue.

Plaintiff did not raise questions in the lower courts relating to creation of political parties on a district basis.





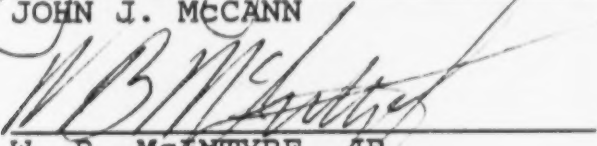
CONCLUSION

WHEREFORE, this Court is asked to  
deny the relief sought by Plaintiff.

Respectfully submitted,

SAMUEL A. TURNER  
CORPORATION COUNSEL  
COUNTY OF WAYNE

  
\_\_\_\_\_  
JOHN J. MCCANN

  
\_\_\_\_\_  
W. B. MCINTYRE, JR.  
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(313) 224-5030

Dated: April 12, 1988



# AFFIDAVIT

JAMES KILLEEN, being sworn, says that if called upon to testify would testify as follows:

1. James Killeen is the Clerk of the County of Wayne and has the power to hire and discharge the occupant of the Wayne County Civil Service position of Director of Elections of Wayne County.

2. Lawrence N. Verbiest tendered his retirement and same was accepted by myself.

3. Lawrence N. Verbiest ceased occupying the position of Wayne County Director of Elections as of December 31, 1976(sic), and he, Lawrence Verbiest, claims none of the powers and duties of that position.

/s/JAMES R. KILLEEN  
Clerk of the County of Wayne

Subscribed and sworn to  
before me this 25th day of  
August, 1987.

/s/Lillian M. Shipp  
NOTARY PUBLIC, COUNTY OF WAYNE  
My Commission Expires: 7-30-90